

REMARKS

A. The Double Patenting Rejections

Claims 1, 3, 4, 8, 10-13, 15-23, 25-28, 30-33, 35 and 36 were rejected on the grounds of non-statutory obviousness-type double patenting in view of U.S. Patent No. 7,171,124 (“‘124 Patent”), commonly owned and assigned to the same entity as the present application. The Applicants respectfully disagree and traverse these rejections for at least the following reasons.

A comparison of the claims of the instant application and the ‘124 Patent reveals that the claims are patentably distinct from one another. Accordingly, the double patenting rejections are not sustainable.

For example, claim 1 includes the features of, among other things, assigning a set of wavelengths to a path based on wavelength performance data, wherein the assignment step further comprises, (a) for each regenerator section of the path, selecting a wavelength from a wavelength performance database based on connectivity data for said regenerator section available from a topology database; (b) determining a path performance parameter; and (c) establishing said connection along said path whenever said path performance parameter is better than a threshold.

In comparison, the claims of the ‘124 Patent do not include these features.

Similarly, features present within claims 3, 4, 8, 10-13, 15-23, 25-28, 30-33, 35 and 36 are not present in the claims of the ‘124 Patent.

Accordingly, Applicants respectfully request withdrawal of the rejections and allowance of claims 1, 3, 4, 8, 10-13, 15-23, 25-28, 30-33, 35 and 36.

B. The Section 102 Rejections

(a) rejections based on the ‘124 Patent

Claims 1 and 3-36 were rejected under 35 U.S.C. §102(e) based on the ‘124 Patent. Applicants respectfully disagree and traverse these rejections for at least the following reasons.

(i) claims 1 and 3-9

Claims 1, 3-9 include the feature of, among other things, establishing a connection along a path whenever a path performance parameter is better than a threshold. In contrast, the ‘124 Patent does not disclose the use of a path performance, related threshold to establish a connection. Further, the Applicants note that the Examiner has not cited a specific excerpt from the ‘124 Patent that discloses this feature.

(ii) claims 10-17

Claims 10-17 include the feature of, among other things, attempting to establish a connection along a path whenever a path performance parameter is within a range defining a specified class of service. In contrast, the ‘124 Patent does not disclose such attempts to establish a connection. Further, the Applicants note that the Examiner has not cited a specific excerpt from the ‘124 Patent that discloses this feature.

(iii) claims 18-20

Claims 18 and 20 (claim 19 has been canceled) include the features of, among other things, measuring a performance parameter for each wavelength available in a network, where the measuring step includes: (a) determining all free wavelengths that are not used for live traffic exiting a node; (b) for each said free wavelength, setting up a test connection between a transmitter at said node and a next receiver; and (c) measuring said performance parameter for all said test connections. In contrast, the '124 Patent does not disclose such measurement steps. Further, the Applicants note that the Examiner has not cited a specific excerpt from the '124 Patent that discloses these features.

(iv) claims 21-24

Claims 21-23 (claim 24 has been canceled) include the feature of a connection optimization system comprising, among other things, a wavelength exerciser for setting-up test connections on all regenerator sections, for each wavelength unused on said regenerator section to populate a measurement database with measured data. In contrast, the '124 Patent does not disclose such a wavelength exerciser. Further, the Applicants note that the Examiner has not cited a specific excerpt from the '124 Patent that discloses these features.

(v) claims 25-32

Claims 25-32 include the feature of, among other things, connecting an optical signal analyzer (OSA) to a plurality of measurement points in a

network for automatically collecting on-line measured performance data. In contrast, the ‘124 Patent does not disclose such a use of an OSA. Further, the Applicants note that the Examiner has not cited a specific excerpt from the ‘124 Patent that discloses this feature.

(vi) claims 33-36

Claims 33-25 (claim 36 has been canceled) are directed at a method of optimizing connections in a wavelength switched optical network, comprising, among other steps, controlling the operation of all other wavelengths passing through a specified regenerator section for maintaining the performance data of each of said all other wavelengths on said paths within a respective range, including selecting one or more of said other wavelengths to provide greater wavelength spacing.

In contrast, the ‘124 Patent does not disclose such features. Further, the Applicants note that the Examiner has not cited a specific excerpt from the ‘124 Patent that discloses these features.

(b) rejections based on the Park et al reference

Claims 1 and 3-36 were rejected under 35 U.S.C. §102(e) based on U. S. Patent No. 6,996,342 to Park et al (“Park”). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Claims 1, 10, 18, 21, 25 and 33 are independent claims and it is these claims that we now turn, it being understood that the following rationales apply equally to the claims that depend on each of these independent claims.

(i) claim 1

Claim 1 includes the features of, among other things, for each regenerator section of a path, selecting a wavelength from a wavelength performance database based on connectivity data for the regenerator section available from a topology database, determining a path performance parameter, and establishing a connection along said path whenever said path performance parameter is better than a threshold.

In contrast, Park appears to select a wavelength for each “sectional link” based on “wavelength availability information” (see column 8, line 66 to column 10, line 4). From the general description in Park such information does not appear to include connectivity data nor does it appear to be related to a performance parameter. Rather, the availability information appears to be related to whether or not a wavelength is in use.

(ii) claim 10

Claim 10 includes the features of, among other things, determining a regenerator section performance parameter for each regenerator section of a path and a path performance parameter and attempting to establish a connection along the path whenever a path performance parameter is within a range that defines a specified class of service.

Similar to the discussion of claim 1, Park does not appear to disclose the use of a performance parameter to select a wavelength. Nor does Park appear to disclose attempts to establish a connection along a path whenever a path

performance parameter is within a range that defines a specified class of service.

(iii) claim 18

Claim 18 includes the features of determining a reach-wavelength correspondence for all wavelengths available for transporting user signals in a network and storing the correspondence in a wavelength performance database and measuring a performance parameter for each wavelength available in the network and storing said measured performance parameter in a measurement database, together with link and wavelength identification information.

Park does not appear to disclose either of the steps set forth above.

(iv) claim 21

Claim 21 includes the feature of a performance calculator for calculating a path performance parameter based on network connectivity information and measured path performance data.

Park does not appear to disclose such a calculator nor does the Examiner point out where in Park such a calculator is alleged to be disclosed.

(v) claim 25

Claim 25 includes the feature of connecting an optical signal analyzer (OSA) to a plurality of measurement points in a network for automatically collecting on-line measured performance data.

Park does not appear to disclose the use of an OSA nor does the Examiner point out where in Park such an OSA is alleged to be disclosed.

(vi) claim 33

Claim 33 includes the feature of controlling the operation of all other wavelengths passing through a specified regenerator section to maintain the performance data of each of these other wavelengths within a respective range.

Park does not appear to disclose the control step set forth above nor does the Examiner point out where in Park such a step is alleged to be disclosed.

Conclusion:

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1, 3-18, 20-23 and 25-35.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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